UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,064	12/15/2000	Andrew L. Bliss	MSFT-0218	9482

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EXAMINER
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ART UNIT	PAPER NUMBER
2192	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>11 May 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered ~~and an explanation of how the new or amended claims would be rejected is provided below or appended~~.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: *1,3,7,10,11,14-20 and 27-31*.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 11.

The examiner notes that while Applicant states, "No claims are amended" (remarks, page 9), the reply filed after the final Office action includes proposed amendments to claims 3 and 7.

Applicant seeks a non-final Office action including "an articulation of motivation and/or suggestion to combine" the references (remarks, page 11).

However, the examiner submits that such action is not appropriate at this time. The record establishes a prima facie case of obviousness. The three basic criteria set forth in MPEP § 2142 have been met. Therefore, the burden shifts to Applicant to provide arguments and/or evidence of nonobviousness. Moreover, the examiner notes that a rigid application of the "teaching, suggestion, or motivation" test is not necessary to support a conclusion of obviousness. See KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385 (2007).

Applicant states, "No indication is provided, however, as to why one would modify Niemi et al., and where the motivation or suggestion to modify Niemi et al. can be found" (remarks, page 10).

Here, Applicant perhaps intended to refer to You, rather than Niemi. As set forth in the final Office action, You does not expressly disclose "each debuggee having a debugging type attribute selected from a plurality of debugging type attributes and representative of a type of debugging to be performed with respect to the debuggee." Nonetheless, You suggests such an attribute. First, as set forth in the final Office action, You discloses that the engine is intended for a plurality of debugging types, and provides examples of such debugging types. Thus, it would have been obvious to a person having ordinary skill in the art to provide a way to convey to the engine the type of debugging that the user intends to perform with respect to the debuggee. Indeed, You does teach "each debuggee having a processor attribute selected from a plurality of processor attributes and representative of a type of processor associated with the debuggee," as recited in the claims, and thus suggests employing an attribute (i.e., a "debugging type attribute") to represent the type of debugging to be performed. Furthermore, one reason a person having ordinary skill in the art would modify You to employ such an attribute is to enable the engine to perform the desired type of debugging without forcing the user to manually input the debugging type. Such a reason was articulated in the final Office action.

Similarly, Applicant states, "Again, no articulation as to the motivation or suggestion to combine You and Niemi et al. has been provided," and, "Nor has any indication been provided as to where motivation or suggestion to combine You, Niemi et al., and Hawley et al. can be found" (remarks, page 11).

To the contrary, the final Office action provides a basis for finding that the combined teachings of the references would have suggested the claimed subject matter to those of ordinary skill in the art. In the first case, as set forth in the final Office action, You does not expressly disclose the "debugging type abstraction" recited in the claims. Nonetheless, Niemi teaches such an abstraction. You teaches the "processor abstraction" recited in the claims, and thus suggests applying an analogous abstraction (i.e., the "debugging type abstraction" of Niemi) to the plurality of debugging types supported in the engine. Additionally, the examiner notes that Niemi also suggests the desirability of the combination in terms of "allow[ing] software developers to easily customize existing code to meet their particular needs" (Niemi, column 8, lines 7-10). In the second case, as set forth in the final Office action, one reason a person having ordinary skill in the art would modify You to include attributes in the executable, as recited in the claims and as Hawley suggests, is to enable "default" selections "in the absence of overriding alternative selections made by the user" (Hawley, column 18, lines 26-37).

Applicant's other arguments (remarks, pages 12-14) are repeated from the reply filed on December 26, 2006. These arguments were addressed in the final Office action and were found unpersuasive.

MY

TUAN DAM
SUPERVISORY PATENT EXAMINER

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